



## STATE OF NEVADA

### BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the  
Request for Opinion concerning  
the conduct of LAURAYNE MURRAY,  
Member, Pahrump Town Board.**

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**Request for Opinion No.: 08-07C**

#### **EXECUTIVE DIRECTOR'S SUPPLEMENTAL REPORT AND RECOMMENDATION REGARDING JUST AND SUFFICIENT CAUSE**

The following is the Executive Director's supplemental report and recommendation based on the additional information requested at the Panel Proceeding held on May 7, 2008.

The Panel requested additional information. Specifically, the Panel requested staff serve a subpoena duces tecum requesting copies of the Minutes, transcription or audio for the March 11, 2008 Pahrump Town Board closed session.

A subpoena duces tecum was served upon the Pahrump Town Attorney, Carl Joerger, Esquire, (Joerger) on May 14, 2008. Joerger informed our General Counsel that he was objecting to and would not comply with the subpoena. Joerger stated that his reason for objecting to comply with the subpoena was because he would violate certain provisions of NRS, including chapter 288 (relations with employees) and NRS 241.015 (attorney-client non-meeting) and his professional code of ethics. Joerger further stated that he would not appear on May 22, 2008 as required in the subpoena.

As an alternative to obtaining the information requested by subpoena, interviews were conducted and declarations were obtained from the following town board members who were present at the meeting. A request was made to interview and obtain an affidavit or declaration from Michael Sullivan, Town Manager; however, he did not agree to the interview stating that doing so may create a conflict with his employment agreement.

During the interview with Sprouse, Joerger was present and he asserted the fact that NCOE Opinion 06-03 (Murray) was very narrow and only specified that Murray should disclose and abstain and refrain from participating in closed sessions as they relate to the collective bargaining agreement with IAFF. This is assertion prompted further review of the transcript from the March 9, 2006 hearing where that opinion was discussed and determined.

Upon review of the March 9, 2006 transcript Commissioner Hsu very specifically asked questions relating to the grievance process, the substance of that discussion is as follows:

Commissioner Hsu: ...Let me ask you real quick about employee grievances. Does your husband participate in grievance processes, representing fire fighters who might be subject to discipline?

Laurayne Murray: Yes, he does.

Commissioner Hsu: And how does the grievance process work? Does it go up a certain level to the Town Board level?

Laurayne Murray: No, it does not. It goes to the Fire Chief. It can be appealed to the Town Manager, and subsequently if the Town Manager doesn't settle, it goes to arbitration.

Commissioner Hsu: Okay. So the Board has no involvement at the grievance stage, correct?

Laurayne Murray: Unless the, no, that is correct for Union negotiated employees. For non-labor negotiated employees, the Employee Personnel Policy does provide the employee an opportunity to appear to the Town Board, but that wouldn't be for anyone that is in the policy. It specifically excludes people that are covered by a union contract.

Commissioner Hsu: Okay.

Laurayne Murray: Theirs would go to arbitration, not to the Town Board.

Later, Murray was asked again by Commissioner Flangas if the only other situation that would come up [before the board] would be potential grievances and again Murray responded that those aren't heard by the Town Board. Finally, Commissioner Flangas also asked how often she should expect that dealing with the Union would be an item on her [Town Board] agenda. Murray responded that they only deal with Union issues at contract time.

During the interview with McDonald, he and Joerger confirmed that the grievances or disciplinary matters involving union members could not be appealed to the Town Board, but rather would go straight to arbitration if not settled by the Town Manager. However, they also explained that the Town Board has the ultimate authority to accept or reject settlement offers made as a result of the arbitration process.

This information begs the question of whether the Commission would have come to the same conclusion to make the opinion on March 9, 2006, as narrow as it was had they had the information we have now.

## **Conclusion and Recommendation:**

Based upon the foregoing information, the additional information obtained in this matter has not changed the previous conclusion and recommendation as stated in the Executive Director's Report and Recommendation provided to the Panel on May 7, 2008. The following is a reiteration of the conclusion and recommendation from that report.

On the issue of the allegation that she used her position to benefit herself and/or her husband during the closed session meeting on March 11, 2008, there was no evidence submitted with the complaint or uncovered during the investigation to support the allegation that Murray violated NRS 281A.400.2. The fact that the subject of the closed session appears to be regarding a personnel issue not related to the Murrays would support the fact that there was no unwarranted privilege for Murray to secure or grant for herself or her husband.

Therefore, the recommendation is that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion on whether Murray violated NRS 281A.400.2.

A fellow Board member, Rust, was not clear as to whether Murray had a conflict sufficient to require her to abstain from participating in the closed session. Therefore, Murray's disclosure and required analysis of whether to abstain may have fallen short of the requirement to disclose sufficient information concerning her commitment or interest to inform the public of the potential effect of the action or abstention upon her or her husband.

Therefore, the recommendation is that the Panel find that just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion on whether Murray violated NRS 281A.420.4.

Murray has a commitment in a private capacity to the interest of her husband. Whether the independence of judgment of a reasonable person in this situation would be materially affected is questionable given the fact that the situation was held in closed session. In *Opinion No. 06-03*, the Commission advised Murray that her "... participation in confidential meetings discussing the ongoing labor negotiations with the IAFF while Mr. Murray is on the negotiation team, would, at the least, give the appearance of impropriety. To avoid this appearance, the Commission recommends that Murray refrain from participation in such confidential meetings. One of the ways to do so would be not to attend at all." The potential exists that the March 11, 2008 closed session creates the same appearance of impropriety as a closed session involving labor negotiations in general. As was stated in the *Kubichek Opinion No. 97-07*, "Prudential forethought, common sense and concern for appearances of impropriety will be the best prophylaxis."

Therefore, the recommendation is that the Panel find that just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion on whether Murray violated NRS 281A.420.2.

When allegations arise regarding the failure of a public officer to comply with a previously issued, binding advisory opinion it is recommended that the full commission review and consider this alleged violation. Since the full commission issued the binding opinion on Murray, it should be the full Commission that reviews and considers the facts in this case because that *Opinion No. 06-03* was specific to the issue of whether Murray should participate in closed meetings regarding collective bargaining agreements, the application of that opinion may not apply to the same fact pattern alleged in this complaint.

Therefore, the recommendation is that the Panel find that just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion on whether Murray failed to comply with a previous Commission advisory opinion (NRS 281A.440.1(a)).

**Conclusion:**

Just and sufficient cause exists for the Commission to hold a hearing and render an opinion on the allegations against Murray as outlined above. Only the full Commission has the authority to determine if her conduct in relation to these issues rises to the level of a violation of state law.

**REPORT PREPARED BY:**

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TAMI E. DEVRIES  
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**APPROVAL AND RECOMMENDATION BY:**

Patricia D. Cafferata DATED: May 21, 2008  
PATRICIA D. CAFFERATA, ESQ.  
EXECUTIVE DIRECTOR